APPEAL NO. 010864
FILED JUNE 6, 2001

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing was held on March 30, 2001. In resolving the issues before him, the hearing officer determined that the respondent (claimant) was entitled to supplemental income benefits (SIBs) for the 9th and 10th compensable quarters; and, therefore, the claimant had not permanently lost entitlement to SIBs. The appellant (carrier) appeals and seeks reversal of the hearing officer's decision and order on sufficiency grounds. The claimant responds and urges affirmance of the hearing officer's decision in all respects.

DECISION

Affirmed.

The hearing officer did not err in determining that the claimant was entitled to SIBs for the 9th and 10th compensable quarters. The evidence adduced at the hearing included numerous and detailed reports from the claimant's treating doctor, Dr. Z. The reports described the impact of both the back injury and related depression on the claimant's abilities to function in terms of the types of restrictions that generally bear on the ability to work (duration of sitting, standing, lifting). The hearing officer found that the multiple opinions of Dr. Z constitute medical narratives (within the meaning of Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 130.102(d)(4) (Rule 130.102(d)(4)) explaining how the claimant's compensable injury caused her to be totally unable to work during the 9th and 10th SIBs quarters. We have reviewed the letters and believe that this interpretation is supported. (We would observe that the reference to "narratives" in the hearing officer's finding is not an attempt to patch together a series of notes and letters into a narrative, which we have stated cannot be done (Texas Workers Compensation Commission Appeal No. 000041, decided February 22, 2000) but a reference to multiple reports, any one of which could constitute "a narrative. . .

In addition, the hearing officer found that no other opinion, including that of the required medical examination doctor, Dr. C, "showed" that the claimant was able to return to work during the 9th or 10th SIBs qualifying periods. In support of this finding, the hearing officer writes in his statement of the evidence that while Dr. C may have had the opinion that the claimant could do some work, his report "deferred the question of the ability to work" to a functional capacity evaluation (FCE). No FCE, as recommended by Dr. C's report, was in evidence. After reviewing this report and the fact that the comments on ability to work are couched somewhat indirectly, we do not agree that the hearing officer's interpretation of this letter is against the great weight and preponderance of the evidence or without support.

The hearing officer did not err in determining that the claimant had not permanently lost entitlement to SIBs. The claimant was previously found by a hearing officer to be not

entitled to SIBs for the 7th and 8th compensable quarters; the Appeals Panel was not able to reach this appeal in the times set out in Section 410.204(a). Thus, although the carrier argues that the hearing officer should have been controlled by that previous decision, as the evidence was no different in quality, we cannot agree that the hearing officer was so constrained. Because the hearing officer found that the claimant was entitled to SIBs for the 9th and 10th SIBs quarters, there were not four consecutive quarters during which the claimant was not entitled to SIBs. *See* Rule 130.106(a).

The claimant complains in her response of the carrier's failure to forward a copy of its request for appeal to the claimant's representative, as well as to the claimant. We have decided that such a failure, while violative of Rule 102.4(b), does not merit an absolute sanction as the claimant requests: disallowing the appeal and making final the decision and order of the hearing officer. At most, the carrier's failure to copy the claimant's representative may have given the claimant additional time to respond. *See* Texas Workers' Compensation Commission Appeal No. 000770, decided May 30, 2000 (with citations). However, the claimant's response was timely and there has been no harm.

The parties presented evidence that genuinely conflicts on the disputed issues. Pursuant to Section 410.165(a), the hearing officer is the sole judge of the weight and credibility of the evidence. The hearing officer resolves the conflicts and inconsistencies in the evidence and determines what facts have been established from the conflicting evidence. Garza v. Commercial Insurance Company of Newark, New Jersey, 508 S.W.2d 701 (Tex. Civ. App.-Amarillo 1974, no writ); St. Paul Fire & Marine Insurance Company v. Escalera, 385 S.W.2d 477 (Tex. Civ. App.-San Antonio 1964, writ ref'd n.r.e.). This is equally true regarding medical evidence. Texas Employers Insurance Association v. Campos, 666 S.W.2d 286 (Tex. App.-Houston [14th Dist.] 1984, no writ). This tribunal will not disturb the challenged findings of a hearing officer unless they are so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986); In re King's Estate, 150 Tex. 662, 244 S.W.2d 660 (1951).

For these reasons, we affirm the decision and order of the hearing officer.

Susan M. Kelley
Appeals Judge

CONCUR:

Elaine M. Chaney
Appeals Judge

Michael B. McShane
Appeals Judge